

Nursing Student Complaints Not Protected

A nursing student at Auburn University at Montgomery (AUM) recently sought judicial protection for her right to complain about the school's grading and disciplinary system. The school utilized a "point" system by which a nursing student engaging in unsafe or unprofessional behavior in the classroom and clinical environments was assigned a point. The accumulation of four points by a student triggered a review by nursing faculty that could lead to several outcomes, including disenrollment. Heenan, an AUM nursing student, received three points relating to her failure to perform clinical duties in her courses, and she thereafter received a fourth point for leaving a clinical site without permission. After this, her academic performance was reviewed by a faculty committee, who recommended that she received a failing grade in the associated course. She was then dismissed from the program by the dean, a decision that was upheld on several subsequent appeals.

Heenan filed suit in federal district court against eight nursing faculty, seeking money damages from them individually. *Heenan v. Rhodes*, No. 2:09cv75-MHT (M.D. Ala. Dec. 27, 2010). She alleged that they had violated her First Amendment speech rights by taking retaliatory action against her because of her opposition to the school's point system. The evidence showed that she had been, over a period of several years, an open and vocal critic of the grading/disciplinary system, asserting to other students and in the presence of faculty that it was arbitrary and subjective

The federal district court carefully analyzed Heenan's speech claim. It first noted that prior judicial precedent affirming a measure of protection for student speech that was not disruptive applied only in the context of "political speech," that is, speech about matters of public import. Heenan's speech was different, in that it touched upon internal matters of pedagogical and curricular concern to the school. School faculty and officials had the responsibility of designing requirements and standards that would assure the graduation of nurses who were competent. As a correlative right, "if Heenan were allowed to graduate without the knowledge necessary to serve as a skilled nurse, by its bestowal of a diploma, AUM would effectively be providing a stamp of approval on Heenan's incompetence . . . [it has] the right to refrain from making this statement."

The court's conclusion strongly affirms the rights of academicians as to matters within their purview as educators:

How teachers grade, and . . . how they treat those students who attempt to use gripes about grades and grading systems as excuses for poor performance, is one of those pedagogical concerns that are at the heart of [the] teaching profession. These gripes, whether voiced privately or openly, are generally not constitutionally protected speech subject to court review.

Since Heenan had no constitutional speech right, the defendant faculty could not be found to have acted unlawfully, and the case against them was dismissed.

This case is of immediate relevance, of course, to professional programs. Beyond that, however, it offers welcome assurance to college faculty and academic administrators generally regarding the courts' reluctance to interfere with their actions in educating, assessing, and preparing students.